

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

July 12, 2016

CERTIFIED RETURN RECEIPT MAIL

Patrick C. Fraizer
Pan-American Life Insurance Co
601 Poydras St.
New Orleans, LA 70130

Dear Fraizer:

Attached is a *Summons, a Complaint & Demand for Jury Trial*, and the *Plaintiff's First Set of Discovery Requests to Defendant* in the case of:

JANET HEINZE,

Plaintiff,

v.

PAN-AMERICAN LIFE INSURANCE
COMPANY and JOHN DOES 1-4,

Defendant,

originating in the District Court of the Eleventh Judicial District of the State of Montana, in and for the county of Flathead.

Service of process was made July 11, 2016, upon the Commissioner of Securities and Insurance, Montana State Auditor, in conformity with the provisions of the Montana Code. Please contact Darla Sautter at (406) 444-2726 with any questions.

Sincerely,

JESSE LASLOVICH
Chief Legal Counsel

JL/ds
Enclosures

cc: Alex K. Evans
Attorney for Plaintiff

Date: 7/28/2016
Time: 04:22 PM
Page 1 of 1

Case Register Report

DV-15-2014-0000006-BC

Janet Heinze vs. Pan American Life Insurance Company

Filed: 1/3/2014
Subtype: Breach of Contract

Status History

Open 1/3/2014

Plaintiffs

Pl. no. 1 Heinze, Janet

Attorneys

Evans, Alex K (Primary attorney) Send Notices

Defendants

Def. no. 1 Pan American Life Insurance Company

Judge History

Date	Judge	Reason for Removal
1/3/2014	Ortley, David M	Current

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
1.000	01/07/2014	01/03/2014	Complaint & Demand for Jury Trial / No summons issued	Ortley, David M
2.000	07/08/2016	07/07/2016	SUMMONS: Summons: Issued to Pan American Life Insurance Company on 7/7/2016; Service Fee of \$0.00.	Ortley, David M

Alex K. Evans
Michael A. Bliven
BLIVEN & EVANS, TRIAL LAWYERS, P.C.
278 Fourth Avenue E.N.
Kalispell, MT 59901
Telephone: (406) 755-6828

Attorneys for Plaintiff

CLERK OF DISTRICT COURT

2014 JAN -3 PM 3: 14

FILED

BY KD
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

JANET HEINZE,

Plaintiff,

v.

**PAN-AMERICAN LIFE INSURANCE
COMPANY AND JOHN DOES 1-4,**
Defendants.

Cause No. DV - 14 - 006 (A)

**DAVID M ORTLEY
COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMES NOW, Plaintiff, JANET HEINZE and hereby complains and alleges as follows:

1. Jurisdiction for this cause lies in within the State of Montana, in that the claim denial and injuries which are the subject of this Complaint occurred within the State of Montana.
2. This cause arises from an injury sustained on a boat, which occurred on or about January 4, 2012.
3. Venue is proper in the above Court in that Plaintiff is a resident of Kalispell, Flathead County, Montana.
4. At all material times, Plaintiff, a pedestrian, Heinze was a resident of Flathead County, Montana.
5. At all material times herein, Defendant Pan-American Life Insurance Company (hereinafter "Pan-American") sold insurance policies and collected premiums for those

COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL
PAGE 1

1 policies. All insurance policies at issue were sold within the State of Montana to
2 Montana citizens and residents.

3 6. At all material times, Janet Heinze was insured by Defendant Pan-American.

4 7. On or November 19, 2011, Janet Heinze purchased an Individual Short Term Medical
5 Expense Insurance Policy from Defendant Pan-American.

6 8. Defendant Pan-American represented to Ms. Heinze that the policy would provide
7 coverage for medical expenses.

8 9. On or about January 4, 2012, Ms. Heinze incurred injuries in a boat.

9 10. Plaintiff filed a claim with Pan-American.

10 11. Defendant Pan-American refused to make payment of any benefits.

11 12. Defendant Pan-American, denied and refused to make payment to Plaintiff under her
12 "Individual Short Term Medical Expense Insurance Policy."

13
14
15 **COUNT I**

16 **BREACH OF CONTRACT**

17 13. Plaintiff re-alleges the allegations contained in paragraphs 1 through 12.

18 14. Plaintiff paid valuable consideration to Pan-American for health insurance benefits under
19 the Individual Short Term Medical Expense Insurance Policy.

20 15. Defendant Pan-American had a contractual obligation to pay submitted medical expenses
21 under its Individual Short Term Medical Expense Insurance Policy.

22 16. Plaintiff provided proof of loss, medical records and bills to defendant Pan-American.

23 17. Plaintiff requested Defendant Pan American to make payment for medical expenses
24 incurred as a result of Plaintiff's injury.
25
26
27
28

- 1 18. Defendant Pan-American refused to make payment for any of Plaintiff's medical
2 expenses.
3
4 19. Defendant Pan-American had a contractual duty to pay for Plaintiff's medical expenses
5 incurred as a result of the boat injury.
6
7 20. Defendant breached its contractual duty by refusing to make payment for Plaintiff's
8 claim.
9
10 21. Defendant's contractual breach caused Plaintiff financial injury.

11 **COUNT II**

12 **COMMON LAW BAD FAITH**

- 13 22. Plaintiff re-alleges the allegations contained in paragraphs 1 through 21.
14 23. Defendant had a duty to pay medical expenses.
15 24. Plaintiff sent Defendant records and bills asking Defendant to pay the claim.
16 25. Defendant had a duty to pay Plaintiff's medical expenses related to the boat injury.
17 26. Defendant repeatedly refused to pay Plaintiff's claim.
18 27. Defendant rejected Plaintiff's claim for payment.
19 28. Defendant's rejection of Plaintiff's claim was unreasonable.
20 29. Defendant violated its fiduciary duty to Plaintiff when it unreasonably rejected Plaintiff's
21 claim.
22 30. Defendant's rejection caused injury to Plaintiff.
23 31. Defendant's rejection of Plaintiff's claim was in bad faith.

24 **COUNT III**

25 **UNFAIR CLAIMS SETTLEMENT PRACTICES(Violations of Sec. 33-18-201, MCA and Sec.**
26 **33-18-242, MCA).**
27

- 1 32. Plaintiff re-alleges the allegations contained in paragraphs 1 through 31.
- 2 33. Defendant misrepresented facts and policy provisions relating to coverage at issue.
- 3 34. Defendant failed to pay Plaintiff's claim after liability became reasonable clear.
- 4 35. Defendant advertised that it would pay Plaintiff's medical expenses.
- 5 36. Plaintiff was justified in relying upon Defendant's representation.
- 6 37. Defendant refused to pay medical expenses Plaintiff incurred as a result of a Pedestrian
- 7 Accident.
- 8 38. Defendant's actions have injured Plaintiff.
- 9 39. Defendant's refusal to pay Plaintiff's claim is in violation of Sec. 33-18-201, MCA and
- 10 Sec. 33-18-242, MCA.
- 11
- 12

13 **COUNT IV**

14 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

- 15 40. Plaintiff re-alleges the allegations contained in paragraphs 1 through 39.
- 16 41. Defendant Pan-American is aware of Plaintiff's outstanding medical expenses and to
- 17 make timely payment under the policy for which Plaintiff purchased.
- 18 42. Defendant Pan American's failure to pay has caused Plaintiff stress, depression, mental
- 19 anguish and anxiety.
- 20 43. Plaintiff's emotional distress was a reasonably foreseeable consequence of Pan
- 21 American's failure to timely make payment under the Pedestrian Accident coverage
- 22 portion of Plaintiff's policy.
- 23

24 **COUNT V**

25 **REQUEST FOR DECLARATORY JUDGMENT**

- 26 44. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 43.
- 27
- 28

(as to Does 1-4)

52. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 51.
53. Defendants owed Plaintiff a duty to pay her medical expenses under the insurance policy and refused to do so.
54. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 53, and also alleges alternatively that individuals or entities denoted as Does 1-4 were negligent and responsible for injury to Plaintiff. Plaintiff may be uncertain as to the corporate identity

1 of Does 1-4 and are presumed to be parent corporations or subsidiaries acting in a unified
2 matter on behalf or for Defendant National Union.

3
4 **WHEREFORE**, Plaintiff prays for judgment against all Defendants as follows:

- 5
6 1. For all general and compensatory damages proved and awarded by the jury or court;
7 2. For all special damages proved and awarded by the jury or court;
8 3. For all other damages allowed by law and awarded by the jury;
9 4. For Punitive damages;
10 5. For Plaintiff's attorney fees;
11 6. For Plaintiffs costs and disbursements in this action; and
12 7. For such other and further relief as the Court deems just and equitable under the
13 circumstances.
14

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant Pan American regarding the
16 Request for Declaratory Judgment pursuant to Montana law as follows:

- 17 1. That the Court declares that Defendant Pan American is obligated to pay for Plaintiff's
18 incurred medical expenses.
19 2. That the Court declares Defendant Pan American's responsibility to pay for all
20 uncontested damages and also reasonable attorneys fees, which have resulted from its
21 unlawful refusal to pay uncontested damages.
22 3. That the Defendants be required to effectuate a fair, equitable and prompt settlement as to
23 the economic damages set forth herein without condition or release.
24 4. For attorney's fees, for damages recovered for the insurance contract pursuant to Sec. 27-
25 8-313, MCA, *Renville, Buxbaum, and Brewer*.
26
27

- 1 5. For attorneys fees based upon the inherent discretion of the Court as noted in *Mountain*
2 *W. Farm Bureau Mut. Ins. Co. v. Brewer*, 69 P.3d 652, 660 (2003) and *Renville v.*
3 *Farmers Ins. Exchange*, 2004 MT 366, ¶¶ 23-32, 324 Mont. 509, ¶¶ 23-32.
4
5 6. For such other and further relief as the Court deems just and equitable under the
6 circumstances.

7 **JURY DEMAND**

- 8 1. Plaintiff hereby demands a jury trial on all claims triable by right.

9 Dated: January 3, 2014

12 BLIVEN & EVANS, TRIAL LAWYERS, P.C.

14 By: 

Alex K. Evans

15 BLIVEN & EVANS, TRIAL LAWYERS, P.C.

16 278 Fourth Avenue East North

17 Kalispell, MT 59901

18 Attorneys for Plaintiff

Alex K. Evans
Michael A. Bliven
BLIVEN & EVANS TRIAL LAWYERS, P.C.
278 Fourth Avenue E.N.
Kalispell, MT 59901
Telephone: (406) 755-6828

Attorneys for Plaintiff

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

JANET HEINZE,

Plaintiff,

v.

**PAN-AMERICAN LIFE INSURANCE
COMPANY AND JOHN DOES 1-4,**
Defendants.

Cause No. DV-14-006 D

SUMMONS

THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE NAMED
DEFENDANT: PAN-AMERICAN LIFE INSURANCE COMPANY

YOU ARE HEREBY SUMMONED to answer the **Complaint** in this action which is
filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to
file your response and serve a copy thereof upon the Plaintiff's Attorney within thirty (30) days
after the service of this summons, exclusive of the day of service; and in case of your failure to
appear or respond, judgment will be taken against you by default for the relief prayed for in the
Complaint.

WITNESS MY HAND AND SEAL OF SAID COURT this 29th day of July, 2016.

BLIVEN & EVANS TRIAL LAWYERS, P.C.

By: Alex K. Evans

Alex K. Evans
Attorney for Plaintiff
278 Fourth Ave. East North
Kalispell, MT 59901

CLERK OF DISTRICT COURT
PEG L ALLISON

Clerk of Court

By: **CHELSEA REYES**
Deputy Clerk

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

July 12, 2016

CERTIFIED RETURN RECEIPT MAIL

Patrick C. Fraizer
Pan-American Life Insurance Co
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Sincerely,

A handwritten signature in black ink, appearing to be "JL" followed by a stylized flourish.

JESSE LASLOVICH
Chief Legal Counsel

JL/ds
Enclosures

cc: Alex K. Evans
Attorney for Plaintiff